

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC. RENTAL  
SOFTWARE ANTITRUST LITIGATION  
(NO. II)**

**Case No. 3:23-md-3071  
MDL No. 3071**

**Honorable Waverly D. Crenshaw**

**Declaration of Benjamin J. Widlanski on  
Behalf of Kozyak Tropin & Throckmorton,  
LLP in Support of the Scott & Robins  
Leadership Application and for the  
Appointment to the Plaintiffs' Steering  
Committee**

**This Document Relates to: ALL CASES**

**DECLARATION OF BENJAMIN J. WIDLANSKI ON BEHALF OF KOZYAK TROPIN  
& THROCKMORTON, LLP IN SUPPORT OF SCOTT & ROBINS LEADERSHIP  
APPLICATION AND FOR THE APPOINTMENT OF KOZYAK TROPIN &  
THROCKMORTON, LLP TO THE PLAINTIFFS' STEERING COMMITTEE**

I, Benjamin J. Widlanski, pursuant to 28 U.S.C. §1746, declare that the following is true and correct to the best of my knowledge and belief.

1. I am a member in good standing of the State Bars of Florida and New York, and the U.S. District Courts for the Southern and Middle Districts of Florida, the Southern, Northern, and Western Districts of New York, and the Court of Appeals for the Second and Eleventh Circuits.

2. I am a partner of the law firm of Kozyak Tropin & Throckmorton, LLP ("KTT"), counsel for plaintiffs in the following actions that are part of the above-captioned multidistrict litigation (the "MDL"): *Marchetti v. RealPage, Inc., et al.*, No. 3:23-cv-00380 (M.D. Tenn.) and *Schmidig v. RealPage, Inc., et al.*, No. 3:23-cv-00391 (M.D. Tenn.).

3. Pursuant to this Court's April 19, 2023, Order (ECF. No. 3) and the June 1, 2023, Order (ECF. No. 243), I submit this declaration in support of the Watters Plaintiffs' Leadership

Application submitted by Scott+Scott Attorneys at Law LLP and Robins Kaplan LLP (the “Scott & Robins Leadership Application”), and to seek appointment of Kozyak Tropin & Throckmorton, LLP to the Plaintiffs’ Steering Committee as detailed in the Scott & Robins Leadership Application.

4. As explained below and in the accompanying **Exhibit A**, I have been a litigator for 16 years. During that time, either I or KTT have been appointed to leadership positions in many different complex cases. Based on this experience and my understanding of the circumstances of this MDL, I support the Scott & Robins Leadership Application.

5. I am familiar with the work of Scott+Scott Attorneys at Law LLP (“Scott+Scott”) and Robins Kaplan LLP (“Robins”). For example, KTT attorneys worked closely with both Robins and Scott+Scott in the *In re Managed Care HMO Litig.*, MDL No. 1334 (S.D. Fla.), a multidistrict litigation in which medical societies and several hundred thousand physicians sued Aetna, Cigna, Humana, and other managed care organizations for monetary and structural relief. Successfully certified as a RICO class action, this case – along with a second, equally challenging action against the Blue Cross entities – was settled for hundreds of millions of dollars in monetary relief, and also provided structural relief to physicians valued at well over a billion dollars.

6. KTT also shared leadership responsibilities with Robins in *In re: Marine Hose Antitrust Litig.*, No. 08-md-1888 (S.D. Fla.), and KTT’s longstanding personal and professional relationship with Robins and its attorneys more recently resulted in KTT retaining the firm for a confidential class action-related dispute, which Robins resolved on extraordinarily favorable terms for KTT.

7. In mine and KTT’s experience with Scott+Scott and Robins, each firm litigated these cases with the utmost professionalism, dedication, and efficiency. They are eminently

qualified to lead the Multifamily Plaintiffs in this MDL and I support the appointment of these two firms as interim co-lead counsel, as set forth in the Scott & Robins Leadership Application.

8. Below I also provide details in support of our appointment to the Watters Plaintiffs' proposed Plaintiffs' Steering Committee as chair of the Southeast Region.

**I. Kozyak Tropin & Throckmorton Has a Demonstrated Ability to Work Cooperatively, Professionally, and Respectfully with Others**

9. KTT's ability to work cooperatively and professionally in lead roles is well established, including as to (1) firms that are part of the Watters Plaintiffs' Leadership Application, and (2) other firms that are seeking leadership positions in the MDL. KTT's credentials are perhaps best represented by the Firm's recent court appointment as Co-Chair Lead Counsel in *In re: Champlain Towers South Collapse Litig.*, No. 2021-015089-CA-01 (Fla. Cir. Ct.) in Miami-Dade County Circuit Court. In this leadership role, KTT was tasked with the supervision and leadership of nearly every prominent plaintiffs' firm in South Florida, and many others from around the country, in managing the litigation stemming from the tragic Champlain Towers South building collapse in Surfside, Florida. In less than 15 months, the KTT-led plaintiffs secured over \$1.1 billion in settlement relief for the victims.

10. As to firms that are part of the Scott & Robins Leadership Application – in addition to the work KTT has done with Scott+Scott and Robins, set forth above – KTT has also previously worked with Cadario Zirpoli of the Joseph Saveri Law Firm in *In re Managed Care HMO Litig.*, discussed *supra* at ¶5; as well as ongoing work with Cafferty Clobes Meriwether & Sprengel LLP in *In re: Blue Cross Blue Shield Antitrust Litig.*, No. 13-cv-20000-RDP (N.D. Ala.), an antitrust multidistrict litigation currently being litigated in the Northern District of Alabama in which the plaintiffs have alleged a violation of the antitrust laws through defendants' agreement not to compete with each other and to limit competition among themselves in selling health insurance

and administrative services for health insurance. KTT attorneys currently serve on several committee positions in this matter.

11. Just as with KTT's experience with Scott+Scott and Robins, each of these firms litigated these cases with the utmost professionalism, dedication, and efficiency.

12. As to firms that are not part of the Scott & Robins Leadership Application, KTT's experience is similarly cooperative, professional, and extensive. In *In re Managed Care HMO Litig.*, discussed *supra* at ¶5, KTT worked with the law firm of Lieff Cabraser Heimann & Bernstein, as well as Michael Hausfeld of Hausfeld LLP ("Hausfeld"). KTT also shares leadership responsibilities with Hausfeld in the ongoing *In re: Blue Cross Blue Shield Antitrust Litigation*, discussed *supra* at ¶10, and has worked cooperatively with the law firm of Hagens Berman Sobol Shapiro LLP in *In re: Evenflo Company, Inc. Marketing, Sales Practices and Products Liability Litigation*, No. 1:20-md-02938 (D. Mass.) as well as *In re: Herbal Supplements Marketing and Sales Practices Litig.*, No. 1:15-cv-05070 (N.D. Ill.). Indeed, KTT's experience with these firms is not limited exclusively to mutual representation of plaintiffs: in *In re Managed Care HMO Litigation*, Robins served as opposing counsel representing one of the defendants in the matter; and in *In re: Mushroom Direct Purchaser Antitrust Litig.*, No. 06-cv-00620 (E.D. Pa.), KTT served on the executive committee, Berger Montague represented one of the lead defendants.

13. In addition to KTT's extensive substantive experience, which exemplifies our firm's commitment to professionalism and civility, KTT has also been committed to diversity since the firm's founding. This underscores KTT's commitment to work respectfully with others. In 2001, KTT received the Florida Bar Association's First Annual Diversity Award. The firm was recognized for its commitment to diversity, including race, sex, religion, and ethnic background. The firm also dedicates significant time and resources to the Kozyak Minority Mentoring

Foundation (kmmfoundation.org), which was founded by, and is still managed and overseen by, partners at KTT. The Foundation's mission is to provide assistance and support to minorities interested in pursuing legal careers, sponsor mentoring programs, provide networking opportunities, and offer limited financial aid. The Foundation takes primary responsibility for finding experienced lawyers and judges to mentor minority students at every law school in Florida. During the past two decades, the KMMF has matched thousands of minority law students with judges and lawyers who serve as mentors. The minority mentoring programs at the University of Miami and St. Thomas Schools of Law are now named for KTT co-founder John Kozyak.

14. KTT has also received numerous awards over the years including the Supreme Court Chief Justice's 2004 Law Firm Commendation in recognition of its commitment to providing free legal services to those who cannot afford legal fees; the Florida Bar President's 2006 Pro Bono Service Award; the ABA's 2007 "Spirit of Excellence" award; the Anti-Defamation League's 2010 Jurisprudence Award to recognize contributions to the legal profession and to the community at large; and the 2015 Tobias Simon Pro Bono Service Award, which recognizes extraordinary contributions by a Florida lawyer in making legal services available to people who otherwise could not afford them. In 2016, firm co-founder Harley Tropin received the American Jewish Committee Learned Hand Award, the highest honor given by the AJC within the legal profession.

## **II. KTT Has Decades of Experience in Litigating Complex Antitrust Class Actions**

15. KTT's experience in litigating complex antitrust class actions is substantial. As set forth above, KTT attorneys currently serve on both the Damages and the Discovery Committees in the ongoing *In Re: Blue Cross Blue Shield Antitrust Litig.*, No. 13-cv-20000, discussed *supra* at ¶10.

16. KTT served in a leadership role in *In re: Mushroom Direct Purchaser Antitrust Litig.*, No. 06-cv-00620 (E.D. Pa.), where the plaintiffs alleged violations of the antitrust laws through a conspiracy to set artificially-inflated prices for fresh agaricus mushrooms, and through the implementation of a supply control scheme related to the production of mushrooms. The final settlement in this long running antitrust litigation was finally approved in 2020.

17. KTT served as co-lead counsel (alongside Robins) in *In re: Marine Hose Antitrust Litig.*, No. 08-md-1888 (S.D. Fla.), where the plaintiffs alleged a global conspiracy to illegally fix the prices of, and allocate the market for, marine hoses in violation of the federal antitrust laws. The case was settled in its entirety on the eve of trial.

18. Finally, while not antitrust claims, KTT has prosecuted comparably complex RICO class actions including, but not limited to, KTT's service as Co-Lead Counsel in *In re Managed Care HMO Litigation*, discussed above, which was successfully certified as a RICO class action and ultimately settled for hundreds of millions of dollars in monetary relief, and also provided structural relief to physicians valued at well over a billion dollars.

### **III. KTT Is Willing to Commit the Attorneys and Resources This Litigation Requires**

19. KTT has consistently demonstrated its willingness to commit the attorneys and resources necessary for large scale complex class actions and aggregate litigation. This case will be no different.

20. To start, I, Benjamin J. Widlanski, represent that I have the time and experience necessary to devote to this matter.

21. I hold a B.A. in philosophy and religion from Columbia University and a J.D. from Columbia Law School, where I was a Harlan Fiske Stone Scholar.

22. After graduating law school, I served for almost five years in the United States Army as a Captain in the Judge Advocate General's Corps, where I advised various commanders on military justice matters and other legal issues, litigated in federal court and military courts martial, and received numerous medals and distinctions. Following that, I spent nearly five years as an Assistant United States Attorney at the United States Attorney's Office for the Southern District of Florida. During that time, I prosecuted and investigated hundreds of federal crimes, tried over a dozen cases before a jury, briefed and argued multiple matters before the United States Court of Appeals for the Eleventh Circuit, and managed large investigative teams from virtually every federal law enforcement agency.

23. Since April 2018, I have worked as a trial attorney at KTT. I have represented victims of Ponzi schemes and other large-scale fraud cases in class action lawsuits around the country. I have also represented antitrust plaintiffs in various matters – including *In re: Mushroom Direct Purchaser Antitrust Litig.*, discussed *supra* at ¶16 – as well as consumer classes in lawsuits against large corporations for selling mislabeled products, deceptive trade practices, and data breaches, and I have been appointed lead class counsel in multiple such cases. I am an adjunct professor at the University of Miami Law School, where I teach Litigation Skills, and I have served as a Court-appointed Special Master in a Multidistrict Litigation matter assigned to the Southern District of Florida. *See In re ERMI ('289) Patent Litig.*, No. 19-02914-MD-ALTMAN (S.D. Fla. Mar. 26, 2020) (ECF No. 87).

24. My partner, Javier A. Lopez, is similarly qualified and has the time required to devote to this matter. He attended Harvard University and received a bachelor's degree, *cum laude*, in Sociological Anthropology with a Citation in Romance Languages in 2002. He later

attended the George Washington University School of Law. Following graduation, he became a lawyer at Steel Hector & Davis/Squire Sanders and Dempsey, L.L.P. He later joined KTT.

25. He has been a member of the Cuban American Bar Association since 2005. In 2009, he was elected to the Cuban American Bar Association's Board of Directors and served as its President in 2017. He also serves as a member of The Florida Bar Judicial Nominating Procedures Committee. He also was chosen as a "Golden Angel" by the Jackson Memorial Health Foundation for his philanthropic work for foreign, indigent children seeking urgent medical care.

26. He currently serves on the Discovery Committee in the ongoing *In Re: Blue Cross Blue Shield Antitrust Litig.*, No.13-cv-20000-RDP, discussed *supra* at ¶10, and was the co-lead of the class action track in *In re: Champlain Towers South Collapse Litig.*, No. 2021-015089-CA-01 (Fla. Cir. Ct.) in Miami-Dade County Circuit Court, discussed *supra* at ¶9.

27. My partner, Tal J. Lifshitz, – who also has the experience and time necessary to devote to this matter – received his B.A., *magna cum laude*, from the University of Central Florida and his J.D., *summa cum laude*, from the University of Miami Law School. Following graduation from law school, he served as law clerk to the Honorable Kenneth A. Marra, U.S. District Judge for the Southern District of Florida. Since December 2013, he has worked as a trial attorney at KTT, handling complex commercial and class action litigation. He has personally been involved in litigating over 20 class actions, including the *Mushrooms* antitrust matter detailed above. Tal is also the President for the South Florida Chapter of the Federal Bar Association, and has served as a Faculty Member for NITA, the National Institute for Trial Advocacy, since 2019, teaching multi-day trial and deposition technique programs using NITA's hands-on, "learn-by-doing" method for advocacy seminars.



28. Additionally, KTT has numerous other attorneys who will be available to assist in the prosecution of this case, if needed, including lawyers with expertise in drafting, e-discovery, deposition taking and preparation, working with expert witnesses, damages analyses, trial practice, and appellate work. KTT, as it has in numerous past MDLs and complex class actions, will devote whatever time and resources are needed to effectively and successfully litigate this matter.

#### **IV. KTT Has the Resources to Advance the Litigation in a Timely Manner**

29. As explained above, KTT is willing to dedicate a roster of experienced attorneys to efficiently and expeditiously litigate this case. *See supra* ¶¶19–28.

30. Moreover, KTT’s prior successes in many analogous cases demonstrate that KTT is able and willing to devote significant resources to litigating this case to a timely and just resolution. These cases include:

- Representing victims of a \$1.2 billion Ponzi scheme operated by corrupt Fort Lauderdale lawyer Scott Rothstein, who swindled 260 investors out of close to \$500 million. The Ponzi scheme has been recognized as the second largest fraud in Florida history. KTT served as co-lead counsel for 70% of the victims in *Razorback Funding, LLC, et al. v. Scott W. Rothstein et al.*, No. 09-062943 (07) (Fla. 17th Cir. Ct.) and recovered virtually all of these victims’ roughly \$256 million in investment losses, representing over 50% of total investor losses in the Ponzi scheme. The success rate for these victims has dwarfed those in other recent, massive Ponzi schemes.
- Serving as receiver, trustee, and chairman of the litigation steering committee in the Premium Sales securities fraud litigation in the United States District for the Southern District of Florida, *Securities & Exchange Commission v. Premium Sales Corp. et al.*, No. 93-1092-CIV-MORENO (S.D. Fla.), and the United States Bankruptcy Court for the Southern District of Florida, *In re: Premium Sales Corp.*, No. 93-12253-BKC-AJC (S.D. Fla. Bankr. Ct.). Those actions resulted in recoveries of 62% of investor losses (after fees) in a \$300 million Ponzi scheme.
- Serving as lead counsel for 8,000 investors in *In re: US Oil & Gas Litigation*, No. 83-1702-AI-CIV-WMH (S.D. Fla.), a securities fraud class action in which the class recovered its entire net loss in settlement on the eve of trial.

- Serving as lead counsel in *Leor Exploration & Prod., LLC v. Aguiar*, No. 09-60136 (S.D. Fla.), defending a claim for well over a billion dollars while prosecuting a counterclaim for approximately \$180 million involving an oil and gas venture. Our client won the main claim outright, *see Leor Exploration & Prod., LLC v. Aguiar*, 2010 U.S. Dist. LEXIS 101824 (S.D. Fla.), and settled all of the litigation favorably.
- Serving as lead counsel in *HCM High Yield Opportunity Fund, L.P. and Harch International Ltd. v. Skandinaviska Enskilda Banken AB et al.*, No. 99-1350-CIV-JORDAN, a securities fraud case involving representations concerning the issuance of high-yield “junk” bonds in the course of a \$160 million private offering. The action was settled on a classwide basis.
- Serving as co-counsel for the Investor Claims Trustee in investor fraud-related actions arising from the InverWorld Ponzi scheme. *Blackwell v. Wells Fargo Bank, NA, et al.*, No. SA-01-CV-583-FB (W.D. Tex.).
- Serving as lead counsel for class plaintiffs in claims against various major mortgage lenders such as Wells Fargo, HSBC, Bank of America, and Chase in actions related to force-placed insurance. *See, e.g., Hall v. Bank of America et al.*, No. 12-cv-22700 (S.D. Fla.); *Saccoccio v. JPMorgan Chase Bank et al.*, No. 13-cv-21107 (S.D. Fla.); *Fladell v. Wells Fargo Bank et al.*, No. 13-cv-60721 (S.D. Fla.); *Diaz v. HSBC Bank et al.*, No. 13-cv-21104 (S.D. Fla.); and *Jackson v. U.S. Bank, N.A., et al.*, No. 14-cv-21252 (S.D. Fla.).
- Securing a \$150 million settlement against Raymond James on behalf of EB-5 immigrant investors in the Jay Peak scheme that misappropriated more than \$350 million in investor funds. *Daccache v. Raymond James Financial, Inc., et al.*, No. 16-cv-21575 (S.D. Fla.).

31. Regarding KTT’s willingness and ability to devote substantial resources to a matter, in order to secure a swift and just recovery, perhaps no case better represents KTT’s qualifications than the Firm’s recent court appointment as Co-Chair Lead Counsel in *In re: Champlain Towers South Collapse Litigation*, discussed above at ¶9, in which KTT was tasked with the supervision and leadership of nearly every prominent plaintiffs’ firm in South Florida, and many others from around the country, in managing the litigation stemming from the tragic Champlain Towers South building collapse in Surfside, Florida. In less than 15 months, the KTT-led plaintiffs — including

a team of five KTT partners and support from multiple associates and paralegals — secured over \$1.1 billion in relief for the victims.

32. KTT has no agreement with a litigation funder for the purposes of this case.

**V. KTT and the Plaintiffs We Represent Support the Other Appointments Proposed in the Scott & Robins Leadership Application**

33. I am familiar with the other firms who are seeking appointment to the Plaintiffs' Steering Committee as part of the Scott & Robins Leadership Application. For example, as mentioned *supra* at ¶10, KTT attorneys worked closely with Cadio Zirpoli of the Joseph Saveri Law firm in *In re Managed Care HMO Litigation*, MDL No. 1334 (S.D. Fla.), and currently work with attorneys from Cafferty Clobes Meriwether & Sprengel LLP in *In Re: Blue Cross Blue Shield Antitrust Litigation*, No. 13-cv-20000-RDP (N.D. Ala.).

34. These law firms are all highly respected based on their substantial experience litigating complex antitrust class actions and achieving outstanding results for their clients and class members. I support the appointment of these firms to positions on the Plaintiffs' Steering Committee, in addition to seeking the appointment of Kozyak Tropin & Throckmorton, LLP to that Committee.

35. Finally, I am familiar with Tricia Herzfeld, Esq. of Herzfeld, Suetholz, Gastel, Liniski, and Wall, PLLC. I have only collaborated with Ms. Herzfeld during the process of this litigation, but I find her to be diligent, highly skilled, ethical, and collegial. I believe that she would perform admirably in whatever role she receives. Based upon this experience, I support the appointment of Ms. Herzfeld as Plaintiffs' Liaison Counsel, pursuant to the Scott & Robins Leadership Application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6<sup>th</sup> day of June, 2023 in Miami, Florida.

/s/ Benjamin J. Widlanski

Benjamin J. Widlanski (Florida Bar No. 1010644)

**KOZYAK TROPIN THROCKMORTON, LLP**

2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor

Miami, FL 33134

Tel: (305) 372-1800